

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Federal-State Joint Board on Universal Service)	
)	CC Docket No. 96-45
NORTHWEST IOWA TELEPHONE)	
COMPANY)	
)	
Petition for Waiver of Section 54.301(e)(1) Submission Date)	
For True-Up 2006 Local Switching Support Data)	
To: Chief, Wireline Competition Bureau		

PETITION FOR WAIVER – EXPEDITED ACTION REQUESTED

Northwest Iowa Telephone Company (“Company”), pursuant to Section 1.3 of the Commission’s Rules¹, requests waiver of the December 31, 2007 date established by Section 54.301(e)(1) of the Rules for submission of a true-up adjustment for Local Switching Support (“LSS”) data for the 2006 calendar year. The Company faxed in their 2006 LSS true-up data to the Universal Service Administration Company (“USAC”) on the due date of December 31, 2007. However, when the true-up was applied to their settlements from the National Exchange Carrier Administration (“NECA”), the company was made aware that USAC did not have a record of receiving the fax. The company then sent their true-up data to USAC by facsimile on June 4, 2008, and also by a Federal Express delivery on the same date. As described herein, a waiver of the filing deadline is justified.

I. Background

Northwest Iowa Telephone Company is a rural incumbent local exchange carrier (“ILEC”) which service three local exchanges in Woodbury County in rural northwestern Iowa. As of

¹ 47 C.F.R. § 1.3

May 2008, the Company served 6,208 access lines in its single Iowa study area (Study Area Code 351260).

The Company was designated as an ETC by the Iowa Utilities Board in 1997. They have been submitting LSS data and other federal High Cost Support forms and reports in a timely fashion, since these filing requirements were established during the implementation of the Telecommunications Act of 1996. The Company has never previously missed a federal universal service filing deadline, or had a federal universal filing returned as defective or incomplete.

The Company has always filed their own LSS true-up data and have usually done so by facsimile. On December 31, 2007, the company did fax this information in to USAC. When the Company received their monthly NECA Disbursement Notification sheet on Friday May 9, 2008 they realized there was a problem as there was an adjustment of approximately \$517,000 due to USAC. After some investigation with NECA and USAC, the company was made aware on Tuesday, May 13, 2008² that it was due to USAC not receiving our facsimile.

The Company then began to investigate what could be done from that point to rectify this problem. After many communications with NECA employees, research on the USAC web-site and discussions with consultants, the Company proceeded to fax the completed 2006 LSS true-up submission to USAC's designated facsimile number for LSS forms on Wednesday, June 4, 2008. A paper copy of the data submission, together with a signed certification, was also sent to USAC's Piscataway, New Jersey office via United Parcel Service priority envelope on Thursday, June 5, 2008.

The Company would like to note again that they have always complied fully and in timely fashion with all federal universal service filing requirements and deadlines since the 1996 Act

² Although according to the FCC rules, Section 54.301(e)(2)(iv), USAC shall adjust each carrier's LSS payment no later than 15 months after the end of the calendar year for which historical data is submitted (March 31, 2008).

was implemented and thought they had done so with this filing as well. The delay in submitting Northwest Iowa Telephone Company's 2006 LSS true-up was due to a communication error. The Company takes the lapse in reporting seriously and will ensure this will never happen again. All future filings will be sent by fax and paper copy sent overnight to make sure all filings are received in the future.

II. Basis for Relief

Section 1.3 of the Rules permits the Commission's rules to be waived for good cause shown. The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest³. In addition, the Commission may take into account considerations of hardship, equity or more effective implementation of public policy on an individual basis⁴. Waiver of the Commission's rules is therefore appropriate only if special circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest. Northwest Iowa Telephone Company submits that the circumstances that lead to the instant request be considered sufficient to warrant the grant for requested waiver.

A. Special Circumstances Provide Good Cause For Waiver

In *Smithville Telephone Company, Inc*⁵, the Telecommunications Access Policy, Division of the Wireline Competition Bureau granted a rural telephone company a waiver of the October 1, 2003 deadline for the filing of its projected 2004 LSS data. The Division found that the death of the company's president on September 8, 2003, and subsequent management changes gave rise to substantial turmoil which lead to an oversight and inadvertent failure to meet the October 1 deadline, and that the absence of the company's regulatory accountant for a substantial portion

³ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164,1166 (D.C. Cir. 1990)

⁴ *WAIT Radio v. FCC*, 418 F.2d 1153,1159 (D.C. Cir 1969), *cert. denied*, 4090U.S. 1027 (1972)

⁵ 19 FCC Rcd 8891 (WCB May 18, 2004)

of November and December 2003 due to illness contributed to further delays in the discovery of the missed deadline until February 10, 2004. The Division found that, in light of these special circumstances, it would be onerous to deny LSS to the rural telephone company for an entire year⁶. It also found that the special circumstances affecting the company outweighed any processing difficulties that USAC might face as a result of the late filing (in that case, more than four months)⁷.

The special circumstances affecting Northwest Iowa Telephone Company are quite different than those found to constitute good cause for waiver of Section 54.301(b) in the *Smithville Telephone Company* order. But like *Smithville*, Northwest Iowa Telephone Company moved to rectify the problem immediately upon notification. For these reasons alone, the Section 54.301(e)(1) requested by the Company should be granted.

In addition, Northwest Iowa Telephone Company's spotless record of compliance with USAC reporting obligations should also factor into the FCC's assessment of this waiver request. The Company has never previously missed a USAC deadline. The commission found this to be a consideration in the recently granted waiver request of *Citizens Communications and Frontier Communications*⁸. Like Frontier, Northwest Iowa Telephone Company's delay in filing was caused by unique circumstances, was brief, and the error was promptly cured and did not create a hardship for USAC or other fund recipients.

B. Injunctive Relief.

Northwest Iowa Telephone Company further notes that USAC has stated in its Comments in WC Docket NO. 05-195 that some carriers have "over-projected" their LSS for the next calendar year in their Section 54-301(b) filings and that some carriers have failed to submit their actual

⁶ Id at ¶ 5.

⁷ Id

⁸ Citizens Communications and Frontier communications Request for Review of a Decision of the Universal Service Administrator and Petition for Waiver of FCC Rule Section 54.802(a), Order Released October 27, 2005.

LSS true-up data by the Section 54.031(e) deadline⁹. However, USAC states that it currently accepts late-filed Section 54.301(e) true-up submissions to preclude all LSS support received by the ILEC from being rescinded. Unfortunately, this practice is either no longer in place or is contradicted in this current case. All of our currently due high cost funds (Local Switching Support as well as Interstate Common Line Support) was withheld from the Company until their entire projected 2006 LSS amounts have been paid back to USAC. USAC also suggested in their Comments that in order to provide carriers an incentive to file true-up date, the Commission may wish to consider establishing a penalty when a carrier does not file its true-up date by the December 31, deadline. We did not find in the Commission's rules any penalty for failing to file LSS true-up data.

The loss by Northwest Iowa Telephone Company of approximately \$517,000 in expected LSS for 2006 will be extremely onerous and disruptive, particularly because the company had no offsetting reductions in its 2006 local switching costs. The purpose of the LSS universal service program is to provide cost recovery to small LEC's for the costs of their switching investment and expenses. As such, LSS has been a substantial portion of Northwest Iowa Telephone Company's recovery of its switching costs for many years. The continued availability of LSS ensures that companies are not required to recover these relatively higher costs through intrastate, basic rates. As such, LSS thereby avoids potentially higher basic rates that would be contrary to the established universal service principles of affordability and comparability. Northwest Iowa Telephone is likely to have no choice but to offset such a substantial revenue loss by significantly increasing its other revenue streams or by significantly decreasing its investment outlays. In either case, such offsets will have an adverse impact (in the short term and/or long term) upon Northwest Iowa Telephone Company's ability to provide quality services

⁹ *Comments of Universal Service Administrative Company*, WC Docket No. 05-195, *et al.*, October 18, 2005, page 158.

to its rural customers at affordable rates reasonably comparable to those in urban areas in accordance with the Commission's Universal Service goals.

Northwest Iowa Telephone Company makes a request to the FCC that until this waiver is granted, USAC would adhere to a temporary injunction from requiring the Company to pay back their 2006 LSS projected finds.

III. Request for Expedited Action

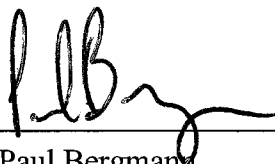
Unless and until the Commission grants these waiver requests, Northwest Iowa Telephone will be forced to forego their 2006 LSS cost recovery revenues. This support is needed and used by both companies to support their ongoing costs and capital improvements to upgrade their networks and to provide advances services. The required data has already been submitted to USAC, and it appears that USAC is fully capable of incorporating this data as a late-filed true-up. Northwest Iowa Telephone requests expedited action by the commission so that USAC can be properly notified as soon as practical so that future settlements will reflect accurate LSS cost recovery.

IV. Conclusion

Northwest Iowa Telephone regrets that their 2006 LSS true-ups were filed after the due date, and have taken steps to ensure this will not happen again. For the reasons stated herein, Northwest Iowa Telephone submits that good cause has been shown for the grant of the requested waiver as set forth herein. Grant of the waiver will allow the Company to receive LSS disbursements for the year 2006 consistent with the statutory goal of preserving and advancing universal service for the rural customers served by the company. This result will be consistent with the public interest. Expedited action is requested to minimize the time that Northwest Iowa

Telephone will be prevented from receiving LSS cost recovery support that they expected to receive. Without the LSS support, it will be the customers of Northwest Iowa Telephone that will be burdened with potential rate changes, curtailed upgrades, or delays in the availability of advances services. With the grant of the waiver, Northwest Iowa Telephone will merely receive the LSS that was intended under the universal service plan policies, and the grant of the waiver will not adversely affect any other carrier or customer.

Respectfully submitted,
**NORTHWEST IOWA TELEPHONE
COMPANY**

A handwritten signature in black ink, appearing to read 'P. Bergmann', written over a horizontal line.

By: Paul Bergmann
President

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Dated: June 5, 2008